

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN WESLEY BANKS,)	
Petitioner)	
)	
vs.)	Civil Action No. 04-918
)	Judge Donetta W. Ambrose/
PENNSYLVANIA BOARD OF)	Magistrate Judge Amy Reynolds Hay
PROBATION AND PAROLE; JOSEPH)	
CHESNEY, Superintendent, State)	
Correctional Institute at Retreat; MIKE)	
FISHER, Attorney General of)	
Pennsylvania,)	
Respondents)	

AND NOW, this 19th day of Dec., 2005, after the petitioner, John

Wesley Banks, filed an action in the above-captioned case, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties ten days after being served with a copy to file written objections thereto, and no objections having been filed, and upon independent review of the record, and upon consideration of the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court, IT IS ORDERED that the petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, is denied.

IT IS FURTHER ORDERED that a certificate of appealability is granted, limited to the two following issues: (1) Whether the 1996 amendment to the Pennsylvania Parole Statute, resulting in the current 61 P.S. § 331.1, violates the ex post facto clause and if so, what is the significance of the Pennsylvania Supreme Court's decision in Winklespecht and its progeny in

light of its holding that the amendment worked no substantive change; and (2) Whether the interpretation or application of the amendment by the Board violated the ex post facto clause and whether post-Winklespecht and its progeny that interpretation or application has been remedied such that post-Winklespecht and its progeny, the Parole Board's interpretation or application can no longer violate the ex post facto clause.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if the plaintiff desires to appeal from this Order he must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed.R.App.P.



DONETTA W. AMBROSE
Chief United States District Judge

cc: Honorable Amy Reynolds Hay
United States Magistrate Judge

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